HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.34346 of 1998

Date: December 10, 2007

Between:

1. K.A. Razack (died)
   petitioners 2 to 9 are brought
   on record as L.Rs. of the
   deceased petitioner as per
   court order Dated 05.12.2003
   in WPMP No.30194 of 2003.

2. K. Ahmed Bee and 7 others. … Petitioners

And

1. The A.P. State road Transport
   Corporation rep. by its Managing
   Director, Musheerabad, Hyderabad
   and 4 others. …. Respondents

* * *

ORDER:

This writ petition has been instituted by a former driver of the Andhra Pradesh State Road Transport Corporation seeking a writ of *Mandamus* to direct respondents to treat the period from the date he was declared medically unfit to function as a driver till the date of his superannuation on 31st October 1996 as continuous service and as on duty with all consequential benefits.

2. The writ petitioner was appointed as a driver with the State owned APSRTC and had been functioning as such from January 26th 1974. He was subjected to medical examination on 12th October 1990 while he was working at Adoni Depot. He was found to have

developed Cataract and consequently the medical examination suggested that he should be re-examined after Cataract surgery is performed so as to evaluate his fitness for undertaking and performing the duties as driver. Initially, he had been placed under leave and thereafter he had been rendered medically unfit for further continuance in service as a driver. On 08th April 1992 the petitioner was asked to exercise an option for taking up alternative employment or to opt for terminal benefits upon his being found medically unfit for the post of driver. By options exercised in April and May 1992, the writ petitioner preferred to take up alternative employment. On 11th July 1992 APSRTC directed the writ petitioner also along with 8 others to appear for purposes of selection for alternative employment on 19th July 1992. At that stage petitioner filed W.P.No.11566 of 1992. Ultimately from out of an interlocutory direction the matter came to be considered by a Division Bench in W.A.No.1514 of 1993 instituted by the writ petitioner herein. The said W.A.No.1514 of 1993 came to be decided by a Division Bench with a direction as under.

> "Once it is found that the appellant stands empanelled as a driver who has been found to be medically unfit and who could be considered for the post of Cleaner and in that panel persons up to Sl.No.6 have been accommodated and there is a possibility of accommodating the appellant also before March, 1994, by which time the panels is to be exhausted, we are of the view that this chance should not be ruled out to the appellant. Accordingly we direct the respondents to work out the panel already drawn up and accommodate the appellant before the panel gets exhausted by March, 1994."

But, however the APSRTC has not offered him any employment. Ultimately, he has been found fit for taking up the post of Cleaner on 28th June 1996. A seniority list of medically unfit drivers found suitable

for taking up alternative employment has been prepared and in the regional list his name was included at serial No.3 and at the State wide list he was standing at serial No.24. In spite of these measures taken, the petitioner is not offered alternative employment at all. W.P.No.11566 of 1992 came to be decided on 09th October 1996 by this Court, which issued a writ of *Mandamus* to the Corporation to appoint the petitioner as a Cleaner forthwith. In compliance with those directions issued by this Court, through an office order dated 23.10.1996 the petitioner came to be appointed as a Cleaner and he was posted to the Kurnool Region.

3. The writ petitioner had retired through an office order dated 31.10.1996 on attaining the age of superannuation (on 31.10.1996). Thus, effectively the petitioner has been denied alternative employment from the time he has been rendered unfit to function as a driver of the Corporation for a very long period. Therefore, the present writ petition came to be instituted so as to add all the years of service in between the date of his being put off duty due to medical de-categorization and ultimately being re-inducted into service as cleaner on 23.10.1996 and ultimately retired from the service of Corporation on 31st October 1996.

4. Unfortunately, during the pendency of this writ petition the writ petitioner has passed away and his dependents have come on record to prosecute this writ petition inasmuch as if his terminal benefits can be revised upwardly it will fetch them additional monetary benefits.

5. I have heard Sri M.N. Narasimha Reddy, learned counsel for the petitioner and Smt. W.V.S. Rajeswari, learned Standing counsel for the Corporation.

6. Learned counsel would contend that but for the extraordinary quantum of time consumed by the Corporation in offering alternative

employment to the petitioner, who had been medically de-categorized to function as driver, he would not have lost out the benefit of the continuity of his service and the benefits arising therefrom. Only pursuant to the directions issued by this Court in W.P.11566 of 1992 did the respondents appoint the petitioner herein as a Cleaner and that was hardly for a week days because he had ultimately retired from service on 31st October 1996 on attaining the age of superannuation. In effect, the Corporation had denied few years of continuous service.

7. *Per contra*, the learned Standing Counsel would urge that the APSRTC has put in place certain measures for taking care of the welfare of the medically de-categorized drivers. The two benefits which are specifically set up for them include (1) payment of 15 days wages for every month of service left for retirement subject to a maximum of 5 years period and (2) if the candidates are otherwise medically fit for taking up alternative employment their cases will be considered for alternative employment for which purpose the seniority list would be drawn including therein the names of candidates who are declared medically unfit to function as drivers. While it is true that a candidate whose name is included at serial No.6 in the original list has been appointed in the alternative employment ahead of the name of the petitioner herein who was placed at serial No.3 in the same list, the reason offered by the Corporation is that they have not on their own jumped the queue but because of the directions issued by this court when the writ petition instituted by the candidate whose name is included at serial No.6, his name came to be considered ahead of the others and that is the reason why he came to be appointed in the alternative employment in preference to others. The fact remains that the petitioner also came to be appointed, but because he has already reached the age of superannuation he had hardly a weeks time left out to function in the alternative post. In these set of circumstances the learned Standing Counsel would urge that the petitioner had been extended the benefit of payment of 15 days wages per month for the

period he was put off duty pursuant to his medical de-categorization and, therefore, he had not been subjected to any hostility in the process of implementation of the welfare measures undertaken by the Corporation.

8. Unfortunately, though time was granted, the learned counsel for the petitioner is handicapped to make any further submissions with regard to whether the petitioner had been paid 15 days wages for the period he was put off duty or not. There is also no material to dispute such a claim borne out by the record of the Corporation. Therefore, it will be difficult to characterize the action of the Corporation in not offering alternative employment promptly to the petitioner as either unjust or arbitrary.

9. Not many posts of cleaners are sanctioned and only 10 % thereof are set apart for being offered for the medically de-categorized drivers. Therefore, unless large number of posts of cleaners does arise in each region, the possibility of accommodating good number of medically de-categorized drivers in the alternative employment does not normally arise. These are perhaps operational difficulties of the respondent corporation and since this court while deciding the writ petition No.11566 of 1992 on 09th October 1996 has not directed the corporation to treat the petitioner to have been appointed against the alternative post with any date prior thereto, the present writ petition cannot be entertained for granting the relief prayed for therein. Unless the petitioner becomes entitled to be appointed with retrospective effect against the alternative employment offered to him, he also cannot be granted the relief of continuous service from the date he was medically declared unfit as a driver. This apart the very process of assessing the suitability of employees de-categorized medically for taking up alternative employment is also a time consuming affair which has got to be taken note of and into consideration before ordering for any such relief. It is therefore difficult to describe the action of the

corporation in not offering alternative employment promptly in favour of the petitioner from the date on which he was medically de-categorized to function as a driver, either as arbitrary or unjust. Hence, for that reason the relief prayed for in the present writ petition cannot be granted.

10. Hence, the writ petition is dismissed, but however without costs.

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(NOOTY RAMAMOHANA RAO, J)

Date: December 10, 2007.
BSB